

## **Title X: Guardians Ad Litem**

### **10.0 Applicability**

This rule shall apply in all domestic relations cases where the court appoints a guardian ad litem to protect and act in the best interest of a child.

### **10.1 Definitions**

For purposes of this rule:

(1) "Guardian ad litem" means an individual appointed to assist a court in its determination of a child's best interest.

(2) "Child means:

(a) A person under eighteen years of age, or

(b) A person who is older than eighteen years of age who is deemed a child until the person attains twenty-one years of age under section 2151.011(B)(5) or section 2152.02(C) of the Ohio Revised Code.

(c) A child under O.R.C. 3109.04 or a disabled child under O.R.C. 3119.86 who falls under the jurisdiction of a domestic relations court or of a juvenile court with a paternity docket.

### **10.2 Appointment of Guardian Ad Litem**

Upon motion of the Court or either party, the Court may appoint a guardian ad litem to protect the best interest of the child and shall appoint a guardian when required under O.R.C. 3109.04(B)(2)(a).

#### **A. Qualifications**

(1) The guardian ad litem shall be an attorney admitted to practice in Ohio who is a member in good standing of the Ohio Bar.

(2) At least fifty percent (50%) of the attorney's practice during the last two years shall be in the area(s) of domestic relations and/or juvenile law.

(3) The attorney must successfully complete a minimum of six hours of pre-service training. The pre-service training course must

be the six hour guardian ad litem pre-service course provided by the Supreme Court of Ohio.

(4) Thereafter, the attorney must successfully complete three hours of specific training per year for continued appointment. The three hour continuing education course must be provided by the Supreme Court of Ohio.

(5) Upon completion of the required pre-service training, an attorney seeking to serve as a guardian ad litem shall submit to the Court the Application For The Guardian Ad Litem Appointment List (Form DR ). The application shall be accompanied by a resume stating the applicant's training, experience and expertise demonstrating the applicant's ability to successfully perform the duties and responsibilities of the guardian ad litem, a copy of the applicant's criminal background check, the applicant's Background Disclosure Statement (Form DR ) and proof of malpractice insurance.

(6) The guarding ad litem must certify annually that they are unaware of any circumstances that would disqualify them from serving and to report the training they have attended to comply with section A (4) of this rule.

(7) If the guardian ad litem has been appointed and paid on another case, the guardian must agree to accept at least one pro bono assignment per year. Refusal of this assignment may result in removal from the list of eligible guardians ad litem.

### **10.3 Procedure of Appointment**

The Court shall appoint guardians ad litem from a public list of eligible candidates (preserving individual privacy) as maintained by the Court so that the workload is equitably distributed among the eligible candidates.

If a party to the case objects to the appointment of a particular guardian ad litem, a motion supported by affidavit, which states with specificity the objection, must be filed and a hearing held.

Whenever feasible, the same guardian ad litem shall be reappointed for a specific child in any subsequent case in any court relating to the best interest of the child.

Any complaints or other comments regarding a guardian ad litem's performance shall be submitted to the Guardian Ad Litem Coordinator.

## **10.4 Order of Appointment**

Each court appointing a guardian ad litem under Rule 48 of the Ohio Rules of Superintendence shall enter an Order of Appointment (DR 10.5) which shall include:

- (1) A statement regarding whether a person is being appointed as a guardian ad litem only or as a guardian ad litem and attorney for the child.
- (2) A statement that the appointment shall remain in effect until discharged by order of the court, by the court filing a final order in the case or by court rule.
- (3) A statement that the guardian ad litem shall be given notice of all hearings and proceedings and shall be provided a copy of all pleadings, motions, notices and other documents filed in the case.
- (4) Provisions for fees and expenses.

## **10.5 Fees and Payments**

- (1) Compensation shall be at the rate of one hundred and seventy-five dollars (\$175.00) per hour for both in-court and out-of-court billable time unless otherwise agreed. The compensation may not exceed Three Thousand Five Hundred Dollars (\$3,500.00). Fees in excess of \$3,500.00 shall be considered by the Court upon the filing of a motion and affidavit.
- (2) The Court may order the payment of a minimum deposit of One Thousand, Seven Hundred Fifty Dollars (\$1,750.00) with the Clerk of Courts, to be used to pay for guardian ad litem services.
- (3) Guardians ad litem shall submit monthly billing to counsel and/or pro se litigants. No sooner than fifteen (15) days of the service of the monthly billing, the guardian ad litem shall submit an entry (DR 10.7) for the release of funds for payment for the bill sent by the guardian ad litem unless there is a motion in opposition filed by either party. The entry submitted by the guardian ad litem shall state the date on which the bill was served and the entry shall be signed by the guardian ad litem accordingly.

## **10.6 Annual Review of Guardians Ad Litem**

The Court will review its list of guardians ad litem annually to determine that all persons on the list are in compliance with the training and education requirements of the Ohio Supreme Court. The Court will also conduct an annual review of the performance of each guardian ad litem on assigned cases during the preceding calendar year.

## **10.7 Responsibilities of the Court**

In order to ensure that only qualified individuals perform the duties of guardians ad litem and that the requirements of this rule are met, each court appointing guardians ad litem shall do all of the following:

- (1) Appoint a person to coordinate the application and appointment process, keep the files and records required by this rule, maintain information regarding training opportunities, receive written comments and complaints regarding the performance of guardians ad litem practicing before that court and perform other duties as assigned by the court.
- (2) Maintain files for all applicants and for individuals approved for appointment as guardians ad litem with the court. The files shall contain all records and information required by this rule, and by local rules, for the selection and service of guardians ad litem including a certificate or other satisfactory proof of compliance with training requirements.
- (3) Conduct, or cause to be conducted, a criminal and civil background check and investigation of information relevant to the applicant's fitness to serve as a guardian ad litem.
- (4) Require all individuals on its list to certify annually they are unaware of any circumstances that would disqualify them from serving and to report the training they have attended to comply with section 10.2 A(3) and (4) of this rule.
- (5) Each court shall develop a process or local rule and appoint a person for accepting and considering written comments and complaints regarding the performance of guardians ad litem practicing before that court. A copy of comments and complaints submitted to the court shall be provided to the guardian ad litem who is the subject of the complaint or comment. The person appointed may forward any comments and complaints to the administrative judge of the court for consideration and appropriate action. Dispositions by the court shall be made promptly. The court shall maintain a written record in the guardian ad litem's file regarding the nature and disposition of any comment or complaint and shall notify the person making the comment or complaint and the subject guardian ad litem of the disposition.

## **10.8 Reports of Guardians Ad Litem**

A guardian ad litem shall prepare a written final report, including recommendations to the court, within the times set forth in this division. The report shall detail the activities performed, hearings attended, persons interviewed, documents reviewed, experts consulted and all other relevant information considered by the guardian ad litem in reaching the guardian ad litem's recommendations and in accomplishing the duties required by statute, by court rule, and in the court's Order of Appointment (DR 10.5).

In domestic relations proceedings involving the allocation of parental rights and responsibilities, the final report shall be submitted to the court and made available to the parties for inspection no less than seven days before the final hearing unless the due date is extended by the court. Written reports may be accessed in person or by phone by the parties or their legal representatives. A copy of the final report shall be provided to the court at the hearing. The court shall consider the recommendation of the guardian ad litem in determining the best interest of the child only when the report or a portion of the report has been admitted as an exhibit.

Unless otherwise agreed by the parties and approved by the Court, the report of the guardian ad litem shall not be entered into direct evidence absent testimony by the guardian ad litem. The parties may cross-examine the guardian ad litem concerning the contents of the report and the basis for the guardian ad litem's recommendations. The report of the guardian shall not be filed with the Clerk of Courts.

## **10.9 Responsibilities of a Guardian Ad Litem**

In order to provide the court with relevant information and an informed recommendation regarding the child's best interest, a guardian ad litem shall perform, at a minimum, the responsibilities stated in this division, unless impracticable or inadvisable to do so.

- (1) A guardian ad litem shall represent the best interest of the child for whom the guardian is appointed. Representation of best interest may be inconsistent with the wishes of the child whose interest the guardian ad litem represents.
- (2) A guardian ad litem shall maintain independence, objectivity and fairness as well as the appearance of fairness in dealings with parties and professionals, both in and out of the courtroom and shall have no ex parte communications with the court regarding the merits of the case.
- (3) A guardian ad litem is an officer of the court and shall act with respect and courtesy to the parties at all times.

(4) A guardian ad litem shall appear and participate in any hearing for which the duties of a guardian ad litem or any issues substantially within a guardian ad litem's duties and scope of appointment are to be addressed.

(5) A guardian ad litem who is an attorney may file pleadings, motions and other documents as appropriate under the applicable rules of procedure.

(6) When a court appoints an attorney to serve as both the guardian ad litem and attorney for a child, the attorney shall advocate for the child's best interest and the child's wishes in accord with the Rules of Professional Conduct. Attorneys who are to serve as both guardian ad litem and attorney should be aware of Rule 3.7 of the Rules of Professional Conduct and act accordingly.

(7) When a guardian ad litem determines that a conflict exists between the child's best interest and the child's wishes, the guardian ad litem shall, at the earliest practical time, request in writing that the court promptly resolve the conflict by entering appropriate orders.

(8) A guardian ad litem shall avoid any actual or apparent conflict of interest arising from any relationship or activity including, but not limited to, those of employment or business or from professional or personal contacts with parties or others involved in the case. A guardian ad litem shall avoid self-dealing or associations from which the guardian ad litem might benefit, directly or indirectly, except for compensation for services as a guardian ad litem.

(9) Upon becoming aware of any actual or apparent conflict of interest, a guardian ad litem shall immediately take action to resolve the conflict, shall advise the court and the parties of the action taken and may resign from the matter with leave of court, or seek court direction as necessary. Because a conflict of interest may arise at any time, a guardian ad litem has an ongoing duty to comply with this division.

(10) Unless expected by statute, by court rule consistent with this rule, or by order of court pursuant to this rule, a guardian ad litem shall meet the qualifications and satisfy all training and continuing education requirements under this rule and under any local court rules governing guardians ad litem. A guardian ad litem shall meet the qualifications for guardians ad litem for each county where the guardian ad litem serves and shall promptly advise each court of any grounds for disqualification or unavailability to serve.

(11) A guardian ad litem shall be responsible for providing the court or its designee with a statement indicating compliance with all initial and

continuing educational and training requirements so the court may maintain the files required in section 10.7 (2) of this rule. The compliance statement shall include information detailing the date, location, contents and credit hours received for any relevant training course.

(12) A guardian ad litem shall make reasonable efforts to become informed about the facts of the case and to contact all parties. In order to provide the court with relevant information and an informed recommendation as to the child's best interest, a guardian ad litem shall, at a minimum, do the following, unless impracticable or inadvisable because of the age of the child or the specific circumstances of a particular case:

- (a) Meet with and interview the child and observe the child with each parent, foster parent, guardian or physical custodian and conduct at least one interview with the child where none of these individuals is present;
- (b) Visit the child at his or her residence in accordance with any standards established by the court in which the guardian ad litem is appointed;
- (c) Ascertain the wishes of the child;
- (d) Meet with and interview the parties, foster parents and other significant individuals who may have relevant knowledge regarding the issues of the case;
- (e) Review pleadings and other relevant court documents in the case in which the guardian ad litem is appointed;
- (f) Review criminal, civil, educational and administrative records pertaining to the child and, if appropriate, to the child's family or to other parties in the case;
- (g) Interview school personnel, medical and mental health providers, child protective services workers and relevant court personnel and obtain copies of relevant records;
- (h) Recommend that the court order psychological evaluations, mental health and/or substance abuse assessments, or other evaluations or tests of the parties as the guardian ad litem deems necessary or helpful to the court; and
- (i) Perform any other investigation necessary to make an informed recommendation regarding the best interest of the child.

(13) A guardian ad litem shall immediately identify himself or herself as a guardian ad litem when contacting individuals in the course of a particular case and shall inform these individuals about the guardian ad litem's role and that documents and information obtained may become part of court proceedings.

(14) As an officer of the court, a guardian ad litem shall make no disclosures about the case or the investigation except in reports to the court or as necessary to perform the duties of a guardian ad litem. A guardian ad litem shall maintain the confidential nature of personal identifiers, as defined in Rule 44 of the Ohio Rules of Superintendence, or addresses where there are allegations of domestic violence or risk to a party's or child's safety. A guardian ad litem may recommend that the court restrict access to the report or a portion of the report, after trial, to preserve the privacy, confidentiality, or safety of the parties or the person for whom the guardian ad litem was appointed in accordance with Rule 45 of the Ohio Rules of Superintendence. The court may, upon application, and under such conditions as may be necessary to protect the witnesses from potential harm, order disclosure of or access to the information that addresses the need to challenge the truth of the information received from the confidential source.

(15) A guardian ad litem shall perform responsibilities in a prompt and timely manner, and, if necessary, an attorney guardian ad litem may request timely court reviews and judicial intervention in writing with notice to parties or affected agencies.

(16) A guardian ad litem who is to be paid by the court or a party, shall keep accurate records of the time spent, services rendered, and expenses incurred in each case and file an itemized statement and accounting with the court and provide a copy to each party or other entity responsible for payment.